



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 23, 1998

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-0231

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111541.

The Harris County District Attorney (the "district attorney") received a request for its records pertaining to Cause No. 9739210. You assert that information you submitted as exhibit A is excepted from required public disclosure based on section 552.108 of the Government Code. You assert that information you submitted as exhibit B is excepted from required public disclosure based on section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure information that is deemed confidential by law, including information deemed confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Texas Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.*

§ 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990)*. Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

Section 552.108 of the Government Code provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; [or]

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You state that the documents in exhibit A are the prosecutor's work product. We have reviewed exhibit A. It appears to be information that was "prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation" or that "reflects the mental impressions or legal reasoning of an attorney representing the state." However, the requestor informs us that he "was allowed to view two statements and/or documents when [he] was viewing the prosecutor's file in the court room prior to the dismissal." Assuming the requestor's viewing of the two documents was not during discovery, the district attorney has waived section 552.108(a)(3) as to the two viewed documents. *See Open Records Decision No. 579 (1990)* at 9. As for the remaining information, we conclude that, with the exception of the "basic information about an arrested person, an arrest, or a crime," the district attorney may withhold the information based on section 552.108(a)(3) of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 111541

Enclosures: Submitted documents

cc: Mr. Robert G. Teeter
Attorney and Counselor at Law
The Coastal Tower, Suite 886
Nine Greenway Plaza
Houston, Texas 77046-0995
(w/o enclosures)